

DHRM BULLETIN

EFFECTIVE DATE: April 6, 1995

REFERENCE: R477-8-9

SUBJECT: Changes to Family and Medical Leave Rules

Page 1 of 2

In order to comply with the final rules of the Family and Medical Leave Act, the following changes are now part of the state's FMLA leave policy:

Designation of FMLA Leave

? Agency management is responsible for designating any qualifying leave taken by employees as FMLA leave and notifying employees in writing of the designation.

Agencies may designate FMLA leave *after the fact* only under the following two circumstances: 1) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return; or 2) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

? If an employee fails completely to provide medical certification requested by the agency, the leave shall not be considered FMLA leave.

Failure to Return From Leave

? If an employee fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. *An employee is considered to have returned to work if he or she returns for at least 30 calendar days.*

Exceptions to this provision include: 1) "Highly compensated employees" who have been denied restoration upon expiration of their leave time; and, 2) Employees whose circumstances change unexpectedly *beyond their control* during the leave period and he or she cannot return to work at the end of 12 weeks.

Expanded Definitions

- ? The definition of "**serious health condition**" has been expanded and shall include: *pregnancy, chronic conditions* (such as asthma), *long-term conditions* (such as Alzheimer's disease), and *conditions that would result in incapacitation without multiple treatments* (such as cancer requiring chemotherapy or radiation treatments).
- ? The definition of "**health care provider**" has been expanded and shall include: *clinical social workers, health care providers recognized by the State, and those practicing in foreign countries that employees visit or where their family members reside.*

In addition, an authorized current health plan provider may contact an employee's health care provider for clarification of information contained in an employee's certification, but may not request additional information.

Impact on Workers' Compensation

- ? Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Accrued paid leave shall not be substituted for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

Other Significant Changes

- ? Agencies may require employees to provide reasonable documentation or statements verifying family relationships.
- ? Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable. If the employee fails completely to provide medical certification requested by the agency, the leave shall not be considered FMLA leave.
- ? Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with ADA's confidentiality requirements.
- ? Employees required to continue to pay their portion of the health care premium must be notified in writing if payment has not been received. Group insurance shall provide such notification and must wait 15 calendar days after the notification before canceling an employee's coverage.